

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FARRELL MITCHELL,

Defendant.

8:18-CR-272

ORDER

The defendant, who pled guilty and was sentenced in February 2020, has filed a motion for a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978). Filing 129. That motion will be denied.

The Court specifically addressed the defendant's *Franks* arguments in its memorandum and order denying his motion to vacate under 28 U.S.C. § 2255. See filing 124 at 4-5. Nothing the defendant argues now has changed the Court's conclusion. Mostly, the defendant simply accuses the averring officer of lying, which would be insufficient to warrant a *Franks* hearing even if this case was still open.

A *Franks* hearing is required when the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and the allegedly false statement is necessary to the finding of probable cause. This showing of deliberate or reckless falsehood is not lightly met. In particular, a defendant must point out specifically the portion of the warrant affidavit that is claimed to be false; and the

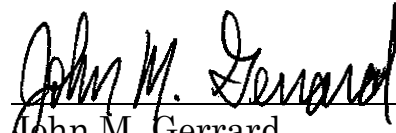
allegations should be accompanied by a statement of supporting reasons. Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained.

*United States v. Lucca*, 377 F.3d 927, 931 (8th Cir. 2004). The defendant's bare allegations don't clear the bar. See *Anderson v. United States*, 762 F.3d 787, 792 (8th Cir. 2014). And more importantly, this case *isn't* still open, and the defendant points to no procedure (other than § 2255, which he already tried) for holding a post-judgment evidentiary hearing to collaterally attack the search warrant underlying a charge to which he pled guilty. Accordingly,

IT IS ORDERED that the defendant's motion for hearing (filing 129) is denied.

Dated this 10th day of April, 2024.

BY THE COURT:

  
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John M. Gerrard  
Senior United States District Judge